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September 7, 2006

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

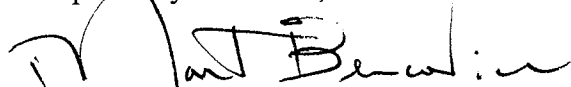
Re: The Louisiana and North West Railroad Company, Discontinuation of Service at
Magnolia, Arkansas; Petition of Albemarle Corporation for Emergency Service
Order and Petition of Albemarle Corporation for Immediate Relief under 49
U.S.C. § 721(b)(4); S.O. No. 1526; MOTION TO STRIKE

Dear Secretary Williams:

On behalf of Albemarle Corporation, we are submitting herewith a Motion to Strike the
Third Reply filed by The Louisiana and North West Railroad Company ("LNW") on September
6, 2006 in the above-captioned proceeding.

Your attention to the foregoing is appreciated.

Respectfully submitted,



Martin W. Bercovici

cc: Edward J. Fishman, Esq. (via hand delivery)
Ouachita Railroad Company (via electronic mail)
Federal Railroad Administration (via hand delivery)

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

In the Matter of: The Louisiana and North West)	
Railroad Company, Discontinuation of Service)	S. O. No. 1526
At Magnolia, Arkansas; Petition of Albemarle)	
Corporation for Emergency Service Order)	

**MOTION OF
ALBEMARLE CORPORATION
TO STRIKE THIRD REPLY OF
THE LOUISIANA AND NORTH WEST RAILROAD COMPANY**

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BEFORE THE
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In the Matter of: The Louisiana and North West)	
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**MOTION OF
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TO STRIKE THIRD REPLY OF
THE LOUISIANA AND NORTH WEST RAILROAD COMPANY**

Albemarle Corporation ("Albemarle"), by its attorneys, respectfully submits this Motion to Strike the Third Reply of The Louisiana and North West Railroad Company ("LNW") submitted to the Board on September 6, 2006 ("Third Reply") in the above-captioned matter.

LNW replied to Albemarle's initiating Petition for Emergency Service Order ("ESO Petition") by letter dated August 21, 2006 ("First Reply"). After Albemarle filed a rebuttal on August 22, 2006, LNW submitted a Second Reply on August 25, 2006 ("Second Reply"). Albemarle submitted a rebuttal to that Second Reply, and LNW now submits a Third Reply.

LNW's perpetuation of the pleading cycle with unauthorized replies is an egregious violation of the Board's procedural rules. Those rules clearly state that "the incumbent carrier must file a reply to a petition under this paragraph within five (5) business days." 49 C.F.R. § 1146.1(b)(2). The rules do not provide for a second reply, and certainly do not

allow for a reply to the petitioning party's rebuttal. As stated in Albemarle's Rebuttal to LNW's Second Reply, a party may file only one reply. The Board's rules are clear that sequential pleadings are not permitted. *See, e.g.*, 49 C.F.R. § 1104.13(c).

There is not one relevant fact contained in LNW's Third Reply that was not available to LNW on August 25, 2006 when it filed its Second Reply.¹ Nor should any of the facts and arguments contained in Albemarle's Reply to LNW's Second Reply be a surprise to LNW. All facts were pre-existing, and all were known to LNW. Whatever the merits of LNW's Second Reply, there is no justification for a third "crack-at-the-apple" to argue matter that was known and relevant at the time of the Second Reply. *See Carolina Power & Light Co. v. Norfolk Southern R. Co.*, Docket No. 42072 (May 9, 2003) ("...there must be a clearly defined cut-off point, after which the record of the proceeding is closed. Thus, if a party wishes to introduce further material at a later stage, it must file a petition to supplement the record. Such a petition should show that the information sought to be introduced is central to the petitioning party's case, could not reasonably have been introduced earlier, and would materially influence the outcome of the proceeding."); *Public Service Co. of Colorado d/b/a Xcel Energy v. The Burlington N. & S.F. Ry. Co.*, Docket No. 42057 at p. 2 (served April 4, 2003) ("The interests of fairness and orderly handling of a case dictate that parties submit their best evidence on opening, so that each party has a fair opportunity to reply to the other's evidence."); *Duke Energy Corp. v. CSX Transp., Inc.*, STB Docket No. 42070 (Mar. 25, 2003). LNW does not pretend to meet the test set out in *Carolina Power & Light*.

¹ The affidavit of Larry Brooks refers to the number of switches performed the week of August 28, but that was cumulative with similar information in the Second Reply, and in any event is not relevant to the termination of service.

Moreover, much of what LNW argues is irrelevant to the ESO petition. Property rights related to the land, i.e. whether the land is “LNW’s property”² or whether the land belongs to Albemarle and LNW has a mere right-of-way or easement, and Albemarle’s rights with regard to its tracks on said land neither are before the Board with regard to the ESO Petition related to switching service nor are matters of law within the jurisdiction of the Board. Nor are the charges for service at issue. This is not the proceeding to prescribe switching charges as LNW requests—that is Docket No. 42096. Also, the issue of liability for handling, and particularly for storage, of hazardous materials, and the compensation therefore, is not before the Board in this proceeding. Again, if relevant those issues are for Docket No. 42096. Matters not relevant to the proceeding properly are stricken. *See Government of the Territory of Guam v. Sea-Land Service, Inc., et al.*, Docket No. WCC-101 at p. 2 (Sep. 15, 2005).

Finally, it would be manifestly inequitable to allow LNW to file a third reply. ESO proceedings are handled on an expedited basis under Part 1146 of the Board’s regulations. LNW has served notice it will not provide switching service after September 14, 2006.³ In the August 30, 2006 Rebuttal to Second LNW Reply Albemarle requested the Board to act by September 8, 2006 in order to afford Ouachita time to position itself and its equipment to provide the switching service across the LNW main line which is the subject of this proceeding. LNW served its Third Reply at approximately 5 p.m. on Wednesday, September 6, 2006. Albemarle is entitled to the closing pleading. Time is not sufficient to respond to the further representations, and misrepresentations, of LNW before the time

² Third Reply at p. 11; *see also* Verified Statement of Larry Brooks at p. 2. The surveyor’s plats show only property and facility location, not ownership.

³ *But see*, Albemarle letter of this date advising the Board that LNW has significantly degraded service, line haul as well as switching, commencing September 1, 2006.

Albemarle has asked the Board to act on the ESO Petition.⁴ In addition, LNW continues to seek to interject settlement discussions into this proceeding. The attempt to describe settlement discussions as “commercial negotiations”⁵ in the midst of a protracted legal proceeding rings patently false. Albemarle will not substantively address the terms of the settlement discussions on the record, but the statement that the discussions were not of a settlement nature and Mr. Brooks’ further representation that “Mr. Wood did not condition this notice commitment on any other occurrence” are demonstrably false.⁶ Moreover, Mr. Brooks’ affidavit relies upon hearsay in his description of the practices of other railroads.⁷ Finally, Mr. Brooks’ attestation to all of the factual representations in LNW’s First and Second replies as well as in the Third Reply is false on its face. In the Second Reply, LNW represented the terrain around the plant as “hilly.”⁸ In his affidavit, Mr. Brooks refers to the terrain as having a “slight but undeniable grade.”⁹ Words paint a picture. Hilly has a distinct meaning, e.g., “1: abounding in hills 2: steep.”¹⁰ “Hilly” is not a “slight but undeniable grade.” The terrain around the plant may be one, or it may be the other: it cannot be both. Or, it may properly be described in other terms. Mr. Brooks’ willingness to attest to inconsistent statements undermines the reliability of his affidavit. For these

⁴ For example, Mr. Brooks refers to “agreements” reached with Albemarle, Affidavit at p. 3, but fails to offer a copy of any such agreements or their terms.

⁵ Affidavit of Larry Brooks at p. 3.

⁶ The falsity of the statement can be demonstrated by documentary evidence, but not on the record, and not without an appropriate protective order. LNW seeks to take advantage of Albemarle’s unwillingness to spread its negotiations on the public record to misrepresent the true facts of the course of dealing.

⁷ Mr. Brooks fails to provide context to his citation to his discussion with other railroads about the storage of hazardous materials. For example, he fails to identify the railroads, whether their storage tracks are in their yards or are on the customer’s plant site, etc. Acceptance of this statement, if relevant, would be highly prejudicial to Albemarle.

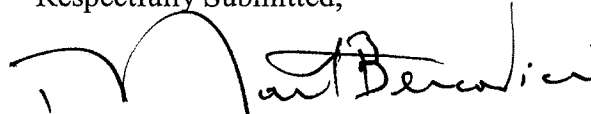
⁸ LNW Second Reply at p. 13.

⁹ LNW Third Reply, Brooks affidavit at p. 5.

reasons and more, LNW's Third Reply and its accompanying affidavit of Larry Brooks cannot stand in the record without rebuttal opportunity.

For the foregoing reasons, Albemarle Corporation respectfully requests the Surface Transportation Board to strike the Third Reply of The Louisiana and North West Railroad Company in this proceeding.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici", is written over the typed name and address.

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September 7, 2006

¹⁰ Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc. (1986).

CERTIFICATE OF SERVICE

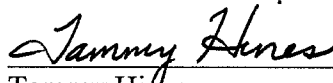
I, Tammy Hines, a secretary at the law firm of Keller and Heckman LLP hereby certify that on this 7th day of September, 2006 have served the foregoing Rebuttal of Albemarle Corporation to Second Reply of The Louisiana and North West Railroad Company on the following by hand delivery, unless otherwise indicated:

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Tammy Hines